

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRAIGSLIST, INC.,)	
)	
Plaintiff(s),)	No. C09-4739 SI (BZ)
)	
v.)	
)	
DOE 1; CHRISTOPHER MEYER, et))	REPORT AND RECOMMENDATION
al.,)	RE PLAINTIFF'S MOTION FOR
)	DEFAULT JUDGMENT
Defendant(s).)	
)	
)	

On January 6, 2011, plaintiff craigslist, Inc. moved for entry of default judgment against defendant Christopher Meyer. Docket No. 54. This motion was referred to me by the Honorable Susan Illston on January 24, 2011. Docket No. 63. Meyer has not appeared in this action and did not respond to craigslist's motion. The following is my report and recommendation for the entry of default judgment against Meyer.

I. BACKGROUND

Craigslist operates and owns all rights, including copyrights, to the website www.craigslist.org which allows

1 users to post classified advertisements on an online forum.¹
2 Second Amended Complaint (SAC) ¶¶ 1, 21-22. To restrict
3 unauthorized access to its website and services, craigslist
4 requires that users agree to its Terms of Use ("TOU"). SAC ¶¶
5 28-33. For further protection and to enforce the TOU,
6 craigslist also employs certain security measures, such as the
7 Complete Automated Public Turing test to tell Computers and
8 Humans Apart ("CAPTCHA"). SAC ¶¶ 41-45, 51-54. When users
9 seek access to a protected webpage, a challenge-response test
10 appears, the CAPTCHA, and if it is not timely solved, users
11 are denied access to that section of craigslist's website.
12 SAC ¶¶ 53-54.

13 Meyer operates the websites www.clbotpro.com and
14 www.craigslistbotpro.com. SAC ¶ 84. Some of the software
15 packages he sells from these websites allow users to
16 circumvent craigslist's CAPTCHA security measures so that the
17 posting of classifieds is automatic rather than manual. SAC ¶
18 85. Meyer's website, as well as the marketing of his
19 products, also use the CRAIGSLIST trademark without
20 authorization. SAC ¶¶ 108-116. As a result of Meyer's
21 conduct, craigslist claims that it has suffered monetary loss
22 as well as harm to its reputation and goodwill. SAC ¶¶ 117-
23 122.

24 II. PROCEDURAL BACKGROUND

25 On October 5, 2009, craigslist filed a complaint against
26

27 ¹ Craigslist has registered copyrights to its website,
28 including the account registration features, the account log-in
features, and the post to classifieds. SAC ¶ 67.

1 John Doe d/b/a www.clbotpro.com and www.craigslistbotpro.com
2 and Does 2 through 25 for: (1) copyright infringement, (2)
3 violation of the Digital Millennium Copyright Act ("DMCA"),
4 (3) violation of the Computer Fraud and Abuse Act, (4)
5 violation of California Penal Code § 502, (5) trademark
6 infringement under federal law, (6) trademark infringement
7 under California law, (7) breach of contract, (8) inducing
8 breach of contract, (9) intentional interference with
9 contractual relations, and (10) fraud. Docket No. 1.

10 On February 26, 2010, craigslist filed a first amended
11 complaint naming Meyer as a defendant. Docket No. 27. After
12 conducting an investigation and attempting more than ten
13 unsuccessful service attempts, craigslist was permitted to
14 serve Meyer by e-mail. Docket No. 34. Craigslist served
15 Meyer by e-mail on July 27, 2010 and August 2, 2010. Meyer
16 never appeared and default was entered against him on
17 September 10, 2010. Docket No. 35.

18 On December 3, 2010, craigslist filed a second amended
19 complaint and effected service of process on Meyer by e-mail.
20 Docket No. 49, 52. Meyer again failed to answer the complaint
21 or otherwise defend the action. The Clerk entered Meyer's
22 default on December 28, 2010. Docket No. 53.

23 On April 6, 2011, I held a hearing on craigslist's motion
24 for default judgment. Craigslist appeared at the hearing, but
25 Meyer did not.

26 **III. DISCUSSION**

27 **A. Personal Jurisdiction**

28 As an initial matter, I address Judge Illston's concern

1 regarding this Court's personal jurisdiction over Meyer.
2 Docket No. 63. "When entry of judgment is sought against a
3 party who has failed to plead or otherwise defend, a district
4 court has an affirmative duty to look into its jurisdiction"
5 over the parties. In re Tuli, 172 F.3d 707, 712 (9th Cir.
6 1999) (citing Williams v. Life Sav. and Loan, 802 F.2d 1200,
7 1203 (10th Cir. 1986)).

8 As the party seeking to invoke this Court's jurisdiction,
9 craigslist bears the burden of establishing that there is
10 personal jurisdiction over Meyer. See Scott v. Breeland, 792
11 F.2d 925, 927 (9th Cir. 1986) (citing Data Disc, Inc. v. Sys.
12 Tech. Assocs., 557 F.2d 1280, 1285 (9th Cir. 1977)).

13 California's long-arm statute, Code of Civil Procedure §
14 410.10, allows the exercise of personal jurisdiction on any
15 basis consistent with the federal constitution. A forum state
16 may exercise personal jurisdiction over a nonresident
17 defendant only if the defendant has certain "minimum contacts"
18 with the forum "such that maintenance of the suit does not
19 offend traditional notions of fair play and substantial
20 justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316
21 (1945) (internal quotations omitted). Courts may exercise
22 either general or specific jurisdiction. Helicopteros
23 Nacionales de Columbia S.S. v. Hall, 466 U.S. 408, 414 (1984).
24 General jurisdiction exists where a defendant's activities in
25 the state are "substantial" or "continuous and systematic,"
26 even if the cause of action is unrelated to those activities.
27 Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280
28 (9th Cir. 1977). Where general jurisdiction is inappropriate,

1 a court may still exercise specific jurisdiction if the
2 defendant has sufficient minimum contacts with the forum state
3 in relation to the plaintiff's cause of action. Id.

4 Craigslist contends this Court has specific personal
5 jurisdiction over Meyer. For the Court to find such
6 jurisdiction, "1) the nonresident defendant must have
7 purposefully availed himself of the privilege of conducting
8 activities in the forum by some affirmative act or conduct; 2)
9 plaintiff's claim must arise out of or result from the
10 defendant's forum-related activities; and 3) exercise of
11 jurisdiction must be reasonable." Roth v. Marquez, 942 F.2d
12 617, 620-21 (9th Cir. 1985) (emphasis omitted). Here, all
13 three prongs are satisfied.

14 Craigslist has demonstrated that Meyer purposefully
15 directed his activity towards California by submitting
16 evidence that he operates commercial websites that are
17 interactive and available for use, as well as actually used,
18 by California residents. Sargent Decl. ¶¶ 3-6, 14-19, 32-33,
19 Exs. 1-7, 16-20, 33-34. Meyer's websites used screenshots of
20 craigslist services for California cities, provided
21 demonstrative videos on how to use the software by displaying
22 California regions as an example, highlighted testimonials on
23 the website from California users, and were registered under
24 Meyer's California address. Sargent Decl. ¶¶ 5, 21, 32-33;
25 Exs. 6, 23, 33-34. I am satisfied that Meyer knowingly and
26 intentionally marketed his services and products to California
27 residents and knew that craigslist, a California company,
28 would suffer harm in the state. See Sargent Decl. ¶ 3.

1 The claims at issue also arise out of Meyer's forum-
2 related activities. Craigslist has demonstrated that "but
3 for" Meyer's actions that were aimed and targeted at a
4 California company, such as his willful violations of the
5 DMCA, craigslist would not have been injured. See Myers v.
6 Bennett Law Offices, 238 F.3d 1068, 1075 (9th Cir. 2001).
7 Lastly, the Court's exercise of jurisdiction is reasonable.
8 There is nothing in the record suggesting that it would be
9 inconvenient or unfair for Meyer to defend himself in
10 California. Moreover, due to Meyer's purposeful contact
11 directed at California, requiring him to litigate in
12 California is not tantamount to a deprivation of due process.
13 See Panavision Int'l L.P. v. Toeppen, 141 F.3d 1316, 1323 (9th
14 Cir. 1998).

15 In the alternative, craigslist argues that personal
16 jurisdiction exists over Meyer based on the forum selection
17 clause in its TOU. Forum selection clauses are presumptively
18 valid. M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10
19 (1972). The Ninth Circuit has recognized that accepting a
20 forum selection clause evidences consent to personal
21 jurisdiction in that forum. See SEC v. Ross, 504 F.3d 1130,
22 1149 (9th Cir. 2007). Accordingly, the Court may enforce the
23 forum selection clause unless it is unreasonable. Zenger-
24 Miller, Inc. v. Training Team, GMBH, 757 F.Supp. 1062, 1069,
25 (N.D. Cal. 1991).

26 Here, craigslist's TOU provides that "[y]ou and
27 craigslist agree to submit to the personal and exclusive
28 jurisdiction of the courts located within the county of San

1 Francisco, California." SAC ¶¶ 7, 30, Ex. A. ¶ 18. Craigslist
2 contends that Meyer agreed to the TOU and therefore assented
3 to personal jurisdiction in the courts of California. I do
4 not see any basis to find that it is unreasonable or unfair to
5 enforce the terms of this clause. Accordingly, since the
6 claims raised in this matter arise from Meyer's purported
7 abuse of the website, including violation of the TOU, the
8 Court may properly exercise personal jurisdiction.

9 **B. Legal Standard for Default Judgment**

10 Pursuant to FRCP 55(b)(2), the Court may enter a default
11 judgment against a party whose default has been entered. By
12 his default, Meyer is deemed to have admitted the well-pleaded
13 averments of the complaint except those as to the amount of
14 damages. FRCP 8(b)(6). The decision to grant or deny a
15 default judgment under FRCP 55(b) is within the discretion of
16 the Court. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.
17 1986).

18 A court may not enter default judgment against an
19 unrepresented minor, an incompetent person, or a person in
20 military service. See FRCP 55(b)(2); 50 App. U.S.C. § 521.
21 Here, craigslist has satisfied me that Meyer is not a minor or
22 incompetent person, and that the Servicemembers Civil Relief
23 Act does not apply to him. Docket 67-68; Docket 81, Poh Decl.
24 ¶¶ 5-11, 15-16.

25 Craigslist claims that Meyer's conduct violated the
26 DMCA. Under § 1201(a)(2), craigslist must prove: "(1)
27 ownership of a valid copyright in a work (2) effectively
28 controlled by a technological measure, which has been

1 circumvented, (3) that third parties can now access, (4)
2 without authorization, in a manner that, (5) infringes or
3 facilitates a right protected by the Copyright Act, because of
4 a product that (6) the defendant either (i) designed or
5 produced primarily for circumvention; (ii) made available
6 despite only limited commercial significance other than
7 circumvention; or (iii) marketed for use in circumvention of
8 the controlling technological measure." Chamberlain Group,
9 Inc. v. Skylink Tech., Inc., 381 F.3d 1178, 1203 (Fed. Cir.
10 2004).

11 Here, the well-pleaded facts which Meyer has admitted by
12 defaulting, establish that craigslist owns valid copyrights in
13 its website and the content within. SAC ¶¶ 60-67, 139. The
14 content is protected by craigslist's CAPTCHA security measures
15 that were circumvented by the products sold by Meyer which
16 allowed users to have unauthorized access to craigslist's
17 copyrighted works. SAC ¶¶ 140, 141. These products had no
18 significant purpose or use other than to circumvent
19 craigslist's security measures and Meyer designed and marketed
20 the products for these purposes. SAC ¶¶ 84-95, 96-99.
21 Accordingly, I find that craigslist has established that Meyer
22 violated § 1201(a)(2) of the DMCA.

23 Craigslist has also established that Meyer violated the
24 Lanham Act. See 15 U.S.C. §§ 1114, 1125(a), and 1125(d).
25 Craigslist owns four registrations in the CRAIGSLIST mark.
26 SAC ¶ 70. Meyer, without authorization, used and displayed
27 the CRAIGSLIST mark on his websites and in sponsored link
28 advertisements. SAC ¶¶ 108-112. The use of craigslist's mark

1 is likely to create consumer confusion and deceive users into
2 wrongfully believing that Meyer's products and services are
3 associated with, affiliated, originate from, connected to,
4 sponsored by, or endorsed by craigslist. SAC ¶¶ 108-116.
5 Moreover, Meyer used the CRAIGSLIST mark deliberately to
6 profit from craigslist's goodwill and reputation. SAC ¶ 116.²

7 **C. Remedies**

8 Having determined that default judgment should be
9 granted, the only remaining issue is the relief available to
10 craigslist. See 3A Entm't Ltd. v. Constant Entm't, Inc., 2009
11 WL 248261 at *6 (N.D. Cal. 2009). Craigslist seeks the
12 following remedies from the Court: (1) a permanent injunction;
13 (2) an order transferring the domain names of Meyer's websites
14 to craigslist; (3) monetary damages; and (4) attorneys' fees
15 and costs.

16 **1. Injunctive Relief**

17 To prevent Meyer from continuing his unlawful conduct,
18 craigslist asks the Court to issue a permanent injunction.³
19 Both the DMCA and the Lanham Act give courts the power to
20 grant reasonable injunctions when necessary to prevent
21 violations of the statutes. See 17 U.S.C. § 1203(b)(1); 15
22 U.S.C. § 1116(a). Here, I find that craigslist has shown that
23 Meyer will continue to cause irreparable harm to its business
24

25 ² I do not discuss craigslist's other claims against
26 Meyer because the remedies it seeks stem from only the DMCA and
the Lanham Act.

27 ³ Courts are permitted to issue injunctions as part of
28 default judgments. See Elektra Ent. Group Inc. v. Crawford,
226 F.R.D. 388, 393-94 (C.D. Cal. 2005).

1 and reputation unless he is restrained. Accordingly, I
 2 recommend that the Court grant craigslist's request for
 3 injunctive relief (Docket No. 58 at ¶ B) except for paragraph
 4 (m).

5 2. Transfer of Domain Names

6 Craigslist also seeks an order from the Court directing
 7 the domain name registrar to transfer the domain names used by
 8 Meyer to craigslist. Such an order would be honored by the
 9 domain name registrar under The Uniform Domain Name Dispute
 10 Resolution Policy. See Sargent Decl. ¶ 19, Ex. 14 at ¶ 3(b)
 11 (the domain name registrar will cancel, transfer, or otherwise
 12 make changes to domain name registrations when it receives a
 13 court order requiring such action). Based on the likelihood
 14 that Meyer will continue his unlawful conduct, I find that
 15 such an order would also be appropriate in this case and
 16 recommend that craigslist's request for the transfer of
 17 Meyer's websites, www.clbotpro.com and
 18 www.craigslistbotpro.com, be granted. See e.g., Zynga Game
 19 Network, Inc. v. John Does 1-5, 3:09-cv-05301 JSW, Docket No.
 20 39 (N.D. Cal. Aug. 25, 2010) (ordering the transfer of domain
 21 names).⁴

22 ///

23
 24 ⁴ Craigslist's proposed order seeks the transfer of not
 25 only these websites, but also any other websites operated by
 26 Meyer that host "craigslist related content." Docket No. 58 at
 27 4. Craigslist does not explain why this broad request is
 28 needed, and it is not clear how the domain name registrar will
 be able to comply with such a nonspecific order. Accordingly,
 I recommend that craigslist's request be limited to only the
 transfer of websites owned by Meyer that are at issue in this
 litigation: www.clbotpro.com and www.craigslistbotpro.com.

1 2. Monetary Damages

2 In its request for monetary damages, craigslist first
3 asks the Court for statutory damages under the DMCA. The
4 statute authorizes courts to award damages "for each violation
5 of section 1201 in the sum of not less than \$200 or more than
6 \$2500 per act of circumvention, device, product, component,
7 offer, or performance of service, as the court considers
8 just." 17 U.S.C. § 1203(c)(3)(A). Courts have wide
9 discretion in determining the appropriate amount of statutory
10 damages and should consider what is reasonable under the
11 particular circumstances of the case. See Craigslist, Inc. v.
12 Hubert, 5:08-CV-05067-JW at *6 (N.D. Cal. Apr. 15 2010) (citing
13 Los Angeles News Serv. v. Reuters Television Intern., Ltd.,
14 149 F.3d 987, 996 (9th Cir. 1998)).

15 Craigslist's request for statutory damages is based on
16 the software programs and CAPTCHA credits sold by Meyer.
17 According to craigslist, using the software with the credits
18 allows individuals to bypass craigslist's access controls to
19 reach copyright protected portions of its website. Each such
20 occurrence is a DMCA violation because it is an "act of
21 circumvention." From documents obtained through third party
22 discovery, craigslist submits evidence that Meyer has sold at
23 least 1448 bundles of CAPTCHA credits in various amounts which
24 adds up to a total of 2,873,500 credits.⁵ Sargent Decl. ¶ 9-
25 10, Exs. 6-7. Meyer also sold 549 software programs that
26 would allow users to use the CAPTCHA credits. Id. Craigslist

27 _____
28 ⁵ Craigslist has made no showing of how many of these
credits were actually used.

1 seeks damages between \$200 and \$2500 for each of these sales
2 which amounts to a statutory damages award range of about \$575
3 million to \$7.2 billion.

4 Such an exorbitant award is problematic for several
5 reasons. For one, it would offend the "canon that [courts]
6 should avoid endorsing statutory interpretations that would
7 lead to absurd results." Arista Records LLC v. Lime Group
8 LLC, 2011 WL 832172 at *3 (S.D.N.Y. 2011) (citations
9 omitted) (court rejected plaintiff's request to find a large
10 number of infringements under the Copyright Act that would
11 potentially result in a statutory damages award of billions or
12 trillions of dollars); see also Stockwire Research Group, Inc.
13 v. Lebed, 577 F.Supp.2d 1262, 1267 ("the Court does not
14 believe Congress, in enacting the DMCA legislation,
15 authorized, nor intended, the requested windfall of between
16 [approximately \$29.5 million to \$295 million] in statutory
17 damages, on the basis of three internet uploads." Similar to
18 the plaintiffs in Arista Records and Stockwire Research Group,
19 craigslist seeks a broad interpretation of the DMCA's "each
20 violation" language that could produce billions of dollars in
21 damages. This too would be an absurd result that was not
22 intended by Congress, particularly considering the factors
23 involved in this case.

24 These factors include (1) whether craigslist's actual
25 damages bear a "plausible relationship" to the statutory
26 damages requested, and (2) if the damages award deters Meyer
27 as well as other defendants from violating the DMCA rather
28 than just resulting in a windfall for craigslist. See Adobe

1 Systems, Inc. v. Tilley, 2010 WL 309249 at *5 (N.D. Cal.
2 2010) (explaining that courts in the Northern District have
3 considered the above factors when determining the appropriate
4 amount of statutory damages under trademark infringement
5 claims). Courts that have evaluated statutory damages under
6 the DMCA, including in cases where craigslist was the
7 plaintiff, have also taken this into consideration. See,
8 e.g., Craigslist, Inc. v. Hubert, 5:08-CV-05067-JW at *7 (N.D.
9 Cal. Apr. 15 2010) ("an award of statutory damages in the range
10 that plaintiff initially requested, between [\$20 million and
11 \$250 million] would be vastly disproportional to the actual
12 costs that plaintiff alleges..."). Similar to Hubert,
13 craigslist in this case seeks billions of dollars in damages
14 even though the most it can muster to allege as its actual
15 damages is an amount "in excess of \$5,000 per year." Docket
16 No. 49 at ¶ 119. There is no "plausible relationship" between
17 these two polar opposite amounts. Rather, the disproportional
18 nature between actual damages and statutory damages only
19 results in a windfall for craigslist. Even if the Court
20 considers Meyer's profits from his scheme, which craigslist
21 has shown to be \$315,938.61, there is still a significant
22 discrepancy between this amount and the requested statutory
23 damages award. Moreover, I find that a significantly lower
24 award would still be sufficient in deterring Meyer, as well as
25 other individuals like him, from violating the DMCA.⁶

26
27 ⁶ Craigslist argues that if its request for about \$575
28 million to \$7.2 billion in statutory damages is determined to
be excessive, the Court may, in the alternative, award damages
based on Meyer's offer to sell 50,000 CAPTCHA credits. This

1 Thus, craigslist's request for an award of millions or
2 billions of dollars is inappropriate for this case. Pursuant
3 to the Court's discretion in setting statutory damages, I
4 recommend an award based on the number of software programs
5 and bundle plans sold by Meyer (1,997),⁷ with the minimum
6 statutory damages amount (\$200) being awarded for the lowest
7 bundle plan (1000 CAPTCHA credits) and the maximum statutory
8 damages amount (\$2500) being awarded for the highest bundle
9 plan (50,000 CAPTCHA credits). Under this formula, as Meyer's
10 conduct becomes more malicious and egregious with each
11 increase of CAPTCHA credits per bundle, craigslist is
12 correspondingly awarded higher damages until the maximum
13 statutory damages award is reached for Meyer's biggest offers
14 of 25,000 and 50,000 CAPTCHA credits. For each sale of the
15 software program, I recommend assessing a statutory damages
16 award of \$1000. Following these guidelines, which are
17 outlined in the charts below, I recommend that the Court award
18 craigslist statutory damages in the amount of \$1,130,700.00.

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24 _____
25 would result in an award ranging from about \$10 million to \$126
26 million. But, for the same reasons just discussed, I find that
27 such a damages award would also be excessive under these
28 circumstances.

28 ⁷ Meyer sold 549 software programs and 1,448 bundle
plans of CAPTCHA credits.

<u>Bundle Plans for CAPTCHA Credits</u>	<u>Number Sold</u>	<u>Statutory Damages for Each Plan Sold</u>	<u>Total Statutory Damages</u>
1000 Credits Plan	977	\$200	\$195,400
3000 Credits Plan	343	\$600	\$205,800
5000 Credits Plan	82	\$1000	\$82,000
10,000 Credits Plan	33	\$2000	\$66,000
25,000 Credits Plan	11	\$2500	\$27,500
50,000 Credits Plan	2	\$2500	\$5,000
<u>TOTAL</u>	1448	N/A	\$581,700.00

<u>Software Program</u>	<u>Number Sold</u>	<u>Statutory Damages for Each Program Sold</u>	<u>Total Statutory Damages</u>
CAPTCHA King Add-On	541	\$1000	\$541,000
CAPTCHA King	8	\$1000	\$8,000
<u>TOTAL</u>	549	N/A	\$549,000.00

Craigslist also seeks a monetary award under the Lanham Act in the form of Meyer's profits.⁸ See 15 U.S.C. § 1117(a). The burden is on craigslist to prove Meyer's sales while he must prove the costs or deductions he is claiming. *Id.* Here, craigslist submits evidence that shows Meyer generated \$315,938.61 in revenues by selling the infringing products on his websites. Sargent Decl. ¶¶ 5-12, Exs. 6, 7.

Meyer, as a result of his default, did not offer any

⁸ An award of profits is appropriate where a plaintiff is able to show that the defendant's violation was deliberate and willful. See *Babbitt Elecs., Inc. v. Dynascan Corp.*, 38 F.3d 1161, 1182 (11th Cir. 1994). Here, craigslist made that allegation, and by defaulting, Meyer exposed himself to an award of his profits. Docket No. 49 at ¶ 178.

evidence about costs or deductions. When faced with the task of analyzing profits involving defendants in default, some courts have held that "[d]oubts regarding the actual amount of profit received are to be resolved against the infringer." Allergan, Inc. v. Mira Life Group, Inc., 2004 WL 2734822 at *4 (C.D. Cal. 2004) (citations omitted). "Where an infringing defendant does not provide evidence from which the court can derive the total profit by deducting costs from revenues, the court may award the entirety of revenue as profit in a trademark infringement case." Id. (citations omitted). I recommend the same procedure be followed here and craigslist be awarded \$315,938.61 in damages for the profits made by Meyer. Adding this amount to the recommended statutory damages award of \$1,130,700.00 results in \$1,446,638.61 of total monetary damages for craigslist.

3. Attorneys' Fees and Costs

Craigslist asks the Court to award \$233,992.17 in attorneys' fees and \$3,673.49 in costs for its work in this matter.⁹ The DMCA authorizes courts, in their discretion, to award reasonable attorneys' fees and costs to the prevailing party. 17 U.S.C. § 1203(b)(5). Such an award is also permissible under the Lanham Act where the infringement is malicious, fraudulent, deliberate, or willful, which craigslist has shown to be the case for Meyer's conduct. See Sealy, Inc. v. Easy Living, Inc., 743 F.2d 1378, 1384 (9th Cir. 1984).

⁹ All of counsel's charged fees already reflect a 10% discount that was provided to craigslist.

1 To determine the reasonable amount of attorneys' fees,
 2 courts should "calculate the 'lodestar figure' by taking the
 3 number of hours reasonably expended on the litigation and
 4 multiplying it by a reasonable hourly rate." Fischer v. SJB-
 5 P.D. Inc., 214 F.3d 1115, 1119 (9th Cir. 2000) (citing Hensley
 6 v. Eckerhart, 461 U.S. 424, 433 (1983)); Crommie v. State of
 7 Cal., 840 F.Supp. 719, 724-25 (N.D. Cal. 1994) (establishing
 8 the lodestar method as the proper method of calculation for
 9 attorneys' fees under state law).¹⁰

10 i. Reasonable Hours Expended

11 Courts begin by determining whether the number of hours
 12 expended litigating this matter was reasonable in light of the
 13 work performed and the context of the case. See McGrath v.
 14 County of Nev., 67 F.3d 248, 254 (9th Cir. 1995). If the
 15 number of hours was unreasonable, courts may exclude any hours
 16 that are excessive, redundant, or otherwise unnecessary.
 17 Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

18 Here, counsel initially billed 402.5 hours and
 19 \$112,798.89 for its work in the case up until its motion for
 20 default judgment was referred to me. Judge Ware previously
 21 warned counsel that its billing practices, in light of the
 22 procedural posture of the cases involving craigslist, were
 23 inappropriate. Craigslist, Inc. v. Hubert, 5:08-CV-05067-JW

24
 25 ¹⁰ Courts must review detailed time records to determine
 26 whether the hours expended on a matter were reasonable or
 27 excessive, and they must also determine the reasonable hourly
 28 rate by looking to "the rate prevailing in the community for
 similar work performed by attorneys of comparable skill,
 experience, and reputation." Chalmers v. City of L.A., 796
 F.2d 1205, 1210-11 (9th Cir. 1986), reh'g denied, amended on
other grounds, 808 F.2d 1373 (9th Cir. 1987).

1 at *9 (N.D. Cal. Apr. 15 2010). In that case, Judge Ware
2 reduced counsel's request for fees by half, from \$81,965.75 to
3 \$40,982.88. Id. I do not recommend halving counsel's pre-
4 referral fees because I am satisfied that substantial fees and
5 costs were reasonably expended on such tasks as identifying
6 Meyer, suing him and negotiating with him. I have cautioned
7 counsel that as they file more of these suits, they will be
8 expected to make every effort to minimize high fees during the
9 early stages of litigation where no responsive pleadings or
10 motions have been filed.¹¹

11 After Judge Illston's referral, counsel billed an
12 additional 341.4 hours and \$121,193.28 in fees. Counsel
13 explains that these additional hours were necessary to prepare
14 supplemental briefing required by my default judgment
15 scheduling order. Considering the context of this case and my
16 order, I find that the amount requested is unreasonable. My
17 order required craigslist to "file any additional authority it
18 has in support of its position that this Court has personal
19 jurisdiction over defendant..." Docket No. 64. Rather than
20 abiding by this order and filing supporting "authority,"
21 counsel filed a binder that was nearly 6 inches thick and
22 weighed over 12 pounds which contained mostly exhibits in

23
24 ¹¹ There were some questionable billing practices by
25 counsel in this case: (1) billing approximately 18.5 hours to
26 draft the initial complaint in this matter even though it is
27 nearly identical to the more than 20 other similar complaints
28 craigslist has already filed before this Court; (2) billing
approximately 19 hours in connection with one administrative
motion to seal; and (3) billing a significant amount of hours
to correct mistakes made by counsel, such as the accidental
filing of two tables of authorities in connection with a brief
and the inclusion of incorrect pages as part of an exhibit.

1 support of their showing of personal jurisdiction.¹² I have
2 never seen such "overkill" even in a highly contested motion.
3 A declaration from counsel summarizing many of the redundant
4 exhibits could have been sufficient. My review of counsel's
5 billing records shows that nearly 90 hours were spent
6 researching and drafting the supplemental brief regarding
7 personal jurisdiction. This too is unreasonable, especially
8 considering counsel had addressed this issue earlier as part
9 of another case before this Court. See Craigslist, Inc. v.
10 Naturemarket, Inc., 694 F.Supp.2d 1039 (N.D. Cal. 2010). In
11 the context of this case, I find that no more than 50 hours in
12 associate time and 25 hours in paralegal time should have been
13 spent in complying with my order. The remaining 266.4 hours
14 were unnecessary. The associates working on this case had
15 billing rates of \$365.00, \$375.00, and \$525.00 per hour.
16 Using the average of these three rates (\$422.00 per hour) and
17 the paralegal's average billing rate (\$202.50 per hour), I
18 recommend awarding counsel \$26,162.50 for their work on the
19 supplemental briefing in this matter, for a total fee award of
20 \$138,961.39.

21 ii. Hourly Rate

22 In support of its hourly rate, counsel submits a
23 declaration outlining each timekeeper's experience and
24 attesting that the hourly rates charged by counsel are
25 comparable to those of other attorneys in the community

26
27 ¹² Twenty days later, counsel filed an even bigger
28 binder that was also in response to my order. Taken together,
counsel filed nearly 12 inches of documents weighing almost 25
pounds after Judge Illston's referral.

1 practicing in the same field. McDougall Decl. ¶¶ 23-28; 32.
2 I am satisfied that the hourly rates charged by craigslist's
3 attorneys are reasonable for their level of experience.

4 iii. Costs

5 With respect to costs, craigslist seeks \$3,673.49 from
6 Meyer. This total reflects "messenger and service costs of
7 \$854.43, private investigator costs of \$32.40, legal research
8 fees of \$345.89, professional service fees of \$1,184.77,
9 electronic discovery database hosting fee of \$696.00, and
10 filing fees of \$560.00." McDougall Decl. ¶ 31. I am
11 satisfied that the costs incurred by counsel are reasonable
12 and they should be granted in the amount requested.

13 **IV. CONCLUSION**

14 For the foregoing reasons, I recommend that craigslist's
15 motion for default judgment be **GRANTED IN PART AND DENIED IN**
16 **PART.**

17 Dated: April 25, 2011

18 
19 Bernard Zimmerman
20 United States Magistrate Judge

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